Before the
Federal Communication Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Appropriate Framework for Broadband	**)**	**CC Docket No. 02-33**
Access to the Internet over Wireline Facilities	**)**	
	)	
Universal Service Obligations of Broadband	**)**	
Providers	**)**	
Computer III Further Remand Proceedings:	**)**	**CC Dockets Nos. 95-20, 98-10**
Bell Operating Company Provision of	**)**	
Enhanced Services; 1998 Biennial Regulatory	**)**	
Review – Review of Computer III and ONA	**)**	
Safeguards and Requirements	**)**	

Reply Comments Of:
Fred Williamson and Associates, Inc. ("FW&A")
On behalf of:

Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC
(Collectively, "ILECs")

July 1, 2002

REPLY COMMENT INDEX

SUMMARY

If the Commission decides to classify wireline broadband Internet access as information service, the FCC should not deregulate the wireline broadband access facilities of small rate of return LECs that serve the rural broadband service market at this time or should allow them the opportunity to opt out of the deregulation. Rate of return LECs serve significantly different markets than do price-cap LECs and require the continued support of the NECA pool to achieve the goal of section 706 of the Act in the rural areas they serve. Deployment of broadband services in many small rural areas at reasonable rates would not be possible without those LECs having the ability to recover the associated costs from the NECA Pool. To promote more aggressive deployment of broadband facilities and services in rural areas and to incite small rural rate of return LECs to continue making the substantial investments necessary to provide broadband services in the rural areas they serve, the Commission should consider different treatment for non-rural and rural LECs. The Commission should insure that rural LECs continue to be able to assign broadband costs to the interstate jurisdiction to be recovered via the NECA pool.

(II)

BROADBAND FACILITIES OF RURAL LECs MUST BE REGULATED AND RECOVERED FROM THE NECA POOL IN ORDER TO PROMOTE CONTINUED BROADBAND INVESTMENT IN THE AREAS THEY SERVE

A. Wireline broadband Internet access facilities and services are telecommunications services, not information services.

In this proceeding, the Commission tentatively concludes that, as a matter of statutory interpretation, the provision of wireline broadband Internet access is an information service rather than a telecommunications service, whether provided to a non-affiliated

ISP (directly or via a CLEC through the sale of UNEs) or when that access is used to enable a self provisioned information service provided by the incumbent LEC. The basic effect of this tentative conclusion is that wireline broadband Internet access services and the wireline facilities used in the provision of these services would be deregulated. However, broadband facilities that provide this access service either to non-affiliated ISPs or CLECs, or for the incumbent LECs own provision of information services are now regulated telecommunications facilities. As a consequence, broadband facility costs are assigned to the interstate jurisdiction and are recovered by rate-of-return companies such as the ILECs from interstate tariffed rates and the NECA pool.

In order to evaluate the information service versus telecommunications service classification of wireline broadband Internet access service, the FCC established the following principles and policy goals:

1. Encourage the ubiquitous availability of broadband to all Americans.
2. In order to encourage broadband's evolution and competition across multiple platforms, and thereby ensure that the needs and demands of the consuming public are met, broadband broadly includes any and all platforms capable of fusing communications power, computing power, high-bandwidth intensive content and all access to the Internet.
3. Broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive environment. Regulatory uncertainty and unduly burdensome regulatory costs should be limited.
4. Develop an analytical regulatory framework that is consistent, to the extent possible, across multiply broadband platforms.
5. Continue to pursue and protect the core objectives of universal service.

FW&A and the ILECs it represents do not believe that the FCC's tentative conclusion satisfies these objectives, nor does it represent a valid interpretation of the statutory language, particularly for small rural LECs. The Commission's logic that wireless broadband Internet access service does not (a) Constitute two components (telecommunications broadband Internet access service and information service) of an integrated service (for an incumbent LEC that provides transmission facilities to an affiliated ISP) or (b) Constitute separate telecommunications broadband access and ISP information service for unaffiliated incumbent LECs and ISPs is incorrect and flawed. In both cases, these are two separate service providers, not a single providing entity as assumed by the Commission. First, as noted by the Nebraska Independent Companies[1] and by the National Telecommunications Cooperative Association (NTCA) in their comments[2], the incumbent LEC provides broadband access facilities or service that is sold as a telecommunications service for a fee directly to the public. This telecommunications service offers a transparent telecommunications path that, as sold, does not change the form or content of information transmitted by the broadband access facilities. As NTCA notes: "Any carrier, including a subsidiary of the offering carrier may purchase the transmission. The fact that a subsidiary of the transmission provider offers the Internet access does not change the fact that the transmission portion is offered on a stand-alone basis."[3] Second there is the ISP service provider which, in conjunction with the end-user's computing equipment, uses the telecommunications broadband access facilities to upload and download information, change its content, store it, etc.

[1] Comments of the Nebraska Independent Companies, filed May 3, 2002, pages 3 and 4.
[2] Comments of the National Telecommunications Cooperative Association, filed May 3, 2002, pages 3 to 5.
[3] Id., page 3.

The ISP, as the Act states, provides an information service that allows the end-user to acquire, generate or make available information via telecommunications. There is no valid reason to conclude, as the Commission has, that Congress' statutory language regarding providing information via telecommunications meant that the transmission component is embedded within, and not distinct from information service.

These providers, the incumbent LEC and ISP are separate entities and offer separate services (broadband access facilities offered by the LEC and information service offered by the ISP) which, when packaged either by the end-user or the ISP, allow the end-user to access the Internet on a high speed basis. There is no factual basis or logic that would lead one to the conclusion that because the ISP's service is an information service that uses telecommunications transmission facilities to move the information from point to point, that the underlying broadband facilities that transmit the information service are information and not telecommunications facilities or service. These facilities only provide the capability to move information, whether voice or high-speed broadband data. The facilities are transparent to the use made of them by the end-user – they are infrastructure.

FW&A believes that the Commission should recognize that broadband Internet access facilities and service are two distinct services. The telecommunications facilities and broadband access service (like dial-up Internet access facilities and service) do not have the capability to change the form or content of the data transmitted and thus, consistent with the statutory definitions, are telecommunications and telecommunications service. The ISPs services, in conjunction with the end-user's computing equipment, provide the hardware and software to acquire, store, upload, download, etc., the data and thus provide the information service (transported by the LEC broadband access service and facilities),

as envisioned by Congress' statutory definitions. Consequently, broadband Internet access service (and the facilities underlying this service), like dial-up Internet access, is a telecommunications service that is subject to the Commission's rules. The service is interstate and is tariffed in the interstate jurisdiction.

B. If the Commission is not willing to accept that telecommunications information access and information exist as two separate services, it should in the alternative, define broadband access as a hybrid service.

The National Rural Telecom Association (NRTA) suggests that, as an alternative to the Commission's tentative conclusion, broadband access can be defined as a hybrid service that combines a telecommunications service component with an information service.[4] As the NRTA states on pages 12 of its comments, "The 1996 Act definition of 'information service,' is consistent with a mutually-exclusive classification scheme of 'information services' and 'telecommunications services' and recognizes that there is always a 'telecommunications' component of information services. However, the statutory definition does not compel a decision that every time an information capability is involved, the underlying broadband telecommunications component is sucked out of Title II and cast into the murky waters of Title I." In other words, the Commission can, if it wishes to view broadband access service as an integrated service, recognize that the integrated service is composed of two components – telecommunications service regulated under Title II and information service. FW&A agrees with NRTA's comments that, "The Commission should recognize that its tentative conclusion that wireline broadband Internet access is an 'information service' without a 'telecommunications

[4] Comments of the National Rural Telecom Association, filed May 3, 2002, page 3 and 9 to 13.

service' component is not necessary under the law…."[5] In fact, there is no conflict with the Act's requirements if the Commission were to adopt the interpretation proposed by NRTA. Adopting this interpretation would continue to regulate the telecommunications services component of wireline broadband access as Title II (as allowed by the Act) and allow small rural LECs to assign the costs to interstate and to recover the costs from the NECA pool. This will provide the regulatory certainty that will insure that small ILECs continue to invest in broadband facilities to be deployed in rural areas and avoid the unintended consequences (retarding this deployment) of the FCC's tentative conclusion that would deregulate these facilities.

C. The pool must be maintained if the Commission concludes that wireline broadband access should be deregulated.

If, at odds with the appropriate regulatory classification of wireline broadband access as a telecommunications service, the Commission persists in its misclassification of these costs as information service, FW&A supports the NTCA[6], NRTA[7], the National Exchange Carrier Association (NECA)[8] and United States Telecom Association (USTA)[9] proposal to allow carriers eligible for the NECA pools to (a) Opt out of broadband deregulation, (b) Assign these costs to interstate and (c) Continue the optional tariffing of broadband services under the NECA pool.[10] As USTA states on page 3 of its comments, "…such carriers should be allowed to have their broadband services treated as Title II common carrier services and be permitted to keep their services in the NECA pools and

[5] Id., page 12.
[6] Comments of NTCA, filed May 3, 2002, pages 5 to 6.
[7] Comments of NRTA, filed May 3, 2002, pages 16 to 18.
[8] Comments of NECA, filed May 3, 2002, pages 2 to 4.
[9] Comments of USTA, filed May 3, 2002, pages 11 to 12.
[10] The Commission could also, as proposed by the Western Alliance (page 9 to 10 of its comments), "…clarify that DSL and other broadband transmission services provided by rural telephone companies

tariffs. The broadband market, including the ILEC-provided broadband services, should be found to be an interstate market and should not be subject to state regulation. All broadband service providers should be able to engage in market-based pricing for their broadband services." Further, as NTCA states on pages 6 and 7 of its comments, "…mandatory detariffing of broadband transmission will not foster broadband investment for all carriers. The Commission should adopt a flexible approach that permits tariffing for those carriers who choose to remain under rate of return regulation….The NECA pooling structure…works as a stabilizing factor for small carriers by reducing administrative costs, creating incentives and spreading the substantial risks of investing in rural areas among its participants…Without the pool, many rural carriers would be forced to forego providing high-speed service because they would have to price it out of the range of affordability [and] The rural consumer would suffer and lag technologically behind those residing in urban areas, counter to the expressed goals of the Act."

D. Continuing to regulate broad access service or in the alternative allow for continued pooling by current NECA pool participants will avoid adverse consequences for small rural LECs and their customers.

Recognizing that wireline broadband access is a separate telecommunications service or a separate telecommunications service component of a hybrid service will continue to insure that small rural LECs are able to assign these facilities to the interstate jurisdiction. This will avoid the negative consequences of:

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remain Title II telecommunications services as long as direct and ultimate access to the Internet is furnished by a separate ISP affiliate or division and/or by unaffiliated ISPs.

1. Depooling of the costs of these facilities by rural carriers resulting in significant rate increases for their existing customers.[11] As the Western Alliance notes in its comments (page 2), small rural LECs, "…incur per-customer facilities and operating costs far in excess of the national average to serve areas that include sparsely populated…communities…Their small size precludes realization of significant economies of scale…" The Alliance goes on to state on pages 6 and 7 that, "By averaging the varying broadband investment and operating costs of hundreds of rural carriers and thousands of rural exchanges, NECA has been able to develop an affordable DSL rate of $39.95 per month for rural telephone company customers…" as opposed to a situation that "…would increase the member's [customer's] monthly DSL rate under Title I [FCC's deregulatory and de-pooling proposal] to well over $250-to-$300 per customer."[12] As the Nebraska Companies comment, "The ability to pool costs and average prices allows LECs in high cost markets to offer xDSL services at prices that promote demand levels that justify investments in a broadband-capable network."[13]

2. Stranding existing broadband investment that has been deployed under Title II regulation. The NRTA comments on page 17 that, "Rural carriers that have deployed advanced services have done so according to the rules in force at the time, and altering those rules can destroy the business case for their deployment decisions….and could also leave these carriers with significant stranded investment and financial losses." These losses and resulting stranded costs will occur as

[11] Comments of the NRTA, filed May 3, 2002, page 17. See also the comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), page 3, "…for many small ILECs, deployment of advanced services would not be viable without pooling."
[12] Information in brackets added for clarity.
[13] Comments of the Nebraska Companies, filed May 3, 2002, page 5.

customers who are unable to afford the required rate increases, resulting from the Commission's proposed policy, disconnect their service.

3. Retarding the further deployment of broadband facilities in rural areas of America, as would be the case if the FCC adopted its tentative conclusion and reassign these costs from a Title II regulated to a Title I unregulated scheme. As the Western Alliance notes on page 4 of its comments, "…the percentage of NECA pool members offering DSL and other advanced telecommunications services rose from 14 percent in 1999 to more than 50 percent in 2001. NECA estimates that approximately 65 percent of rural telephone company lines will be capable of providing broadband service during 2002. This phenomenal progress in implementing rural broadband service was made under Title II rate-of-return regulation, a regime under which many of the small rural carriers investing in broadband facilities were able to recover a critical portion of their broadband investment and operating costs from the NECA pools." This continued growth of broadband access will only be possible if the Commission continues to regulate the broadband costs of the small LECs as interstate and allows them to assign and recover these costs from the NECA pool.

(III)
SECTION 251/252 REQUIREMENTS FOR LINE SHARING AND LINE SPLITTING CAN BE ELIMINATED IF THE COMPUTER II/III REQUIREMENTS ARE MAINTAINED

The current Commission requirements for line sharing and line splitting are unnecessary even if the Commission determines that broadband access service is an information service. If the Commission maintains its Computer II/III requirements, a Competitive Local Exchange Carrier (CLEC) can obtain broadband facilities and service for its

customers, as do ISPs, on the same terms and conditions that the BOC provides to itself. If the Commission determines, as it should, that broadband access service is a telecommunications service and decides to maintain its line sharing and splitting requirements, these requirements should be limited to large price cap LECs. These requirements provide a powerful disincentive for small rural LECs to place costly broadband facilities in high cost, low population, density areas.

(IV)
IF FACILITIES - BASED BROADBAND INTERNET ACCESS SERVICES ARE DETERMINED TO BE INFORMATION AND THUS DEREGULATED, THE PART 64 RULES FOR ALLOCATION OF COSTS TO NON-REGULATED SERVICES DO NOT REQUIRE MODIFICATION

Should the Commission decide to deregulate facilities used to provision broadband access service, it is not necessary for the Commission to modify the current Part 64 Rules that govern the allocation of costs between regulated services and nonregulated services. The Part 64 FCC Rules govern the allocation of costs between regulated and non-regulated services. For assigning costs to regulated and non-regulated activities, the Part 64 Rules require carriers to follow these principles:

- Costs shall be directly assigned to regulated or non-regulated activities whenever possible.
- Costs which cannot be directly assigned to either regulated or non-regulated are considered common and must be allocated based on the following criteria:
    a) Common costs should be first allocated based upon direct analysis of their origin.

b) When direct analysis is not possible, common costs should be allocated based upon a cost causative linkage or another cost category for which direct analysis is possible.

c) If neither of the above is possible, the common costs should be allocated based upon a general allocator computed by using the ratio of all expenses directly assigned or attributed to regulated and non-regulated activities.

The existing rules are adequate to ensure that all costs, including common costs, attributable to broadband Internet access would be directly assigned or allocated to non-regulated services. These rules, by design, are general in nature and do not need to be tailored to a specific product or service. LECs have utilized these rules for several years in assigning costs attributable to non-regulated services to ensure that universal services and other regulated services do not subsidize non-regulated services. Further, it is not necessary for the Commission to address allocations of costs associated with broadband services that employ new technologies in this proceeding. As can be seen by reviewing the comments of the State Consumer Advocates, where almost 50 pages is spent on cost allocation procedures[14], the Commission would be ill-advised to open up these issues in this proceeding. The Joint Board is in the process of reviewing and potentially modifying the current separations procedures. Accommodating new technologies is a key item on the Joint Board's agenda. The Commission should not modify or change rules in this proceeding that may possibly conflict with potential findings and recommendations of the Joint Board.

[14] Comments of State Consumer Advocates, filed May 3, 2002, pages 24 to 56 and Appendix One pages 1 to 13.

Finally, as OPASTCO discusses on pages 7 through 9 of its comments, the LECs' provisioning of broadband Internet access services typically utilizes DSL technology and in most cases employs the same loop that is used to provide voice service. As such, there are no additional loop costs incurred or necessary to provide DSL service. Thus, if DSL access services are deregulated, it would not be appropriate for LECs to allocate any loop costs to non-regulated services when the service shares the voice loop. As the Nebraska Companies indicate in their comments on page 6, "…any reallocation of joint and common costs such as the loop to information services would very likely have a devastating effect on rural LECs and, more importantly their customers, in terms of costs recovery…"

(V)
FACILITIES BASED BROADBAND PROVIDERS (CABLE, SATELLITE AND WIRELESS) AND ISPs SHOULD BE REQUIRED TO CONTRIBUTE TO UNIVERSAL SERVICE

The Commission has established in the NPRM that it has the authority to assess facility-based broadband providers and ISPs for universal service. In the NPRM the Commission states, "[s]pecifically, section 254(d) of the Act provides the Commission the permissive authority to require "[a]ny other provider of interstate telecommunications" to contribute to universal service if required by the public interest. [15] The Commission has exercised this authority based on the fact that certain providers, like telecommunications carriers, "have built their businesses or part of their businesses on access to the [public switched network], provide telecommunications in competition with common carriers, and their non-common carrier status results solely from the manner in which they have chosen to

[15] NPRM para. 71

structure their operations." [16] Any facilities-based and possibly non-facilities-based broadband service provider and ISP would pass this threshold test. Internet service is dependent upon the public switched network for end-users to access the Internet and other end-users that also subscribe to Internet services. Voice over Internet Protocol is growing and in the near future could cause a significant migration of voice traffic from the traditional telephone network to the Internet. As NECA states in its comments (page 5), broadening the base of contributors is necessary in order "…to address the erosion of the interstate revenue base attributable to shifts in usage away from traditional telecommunications services to new services such as Voice-over-Internet Protocol." The Internet is clearly a competitive alternative to telecommunications services. As the Commission acknowledges, "telecommunications carriers that provide telecommunications services, including broadband transmission services are subject to contribution requirements."[17]

Fundamental fairness dictates that all facilities-based providers of broadband and Internet information services should be assessed for Universal Service contributions. As NRTA states on pages 23 through 25 of its comments, "It is neither equitable nor nondiscriminatory, much less competitively neutral, to require only wireline telecommunications carriers to contribute on the basis of revenues earned from broadband transmission service, while exempting all other broadband providers and platforms from this obligation…Allowing some competing broadband Internet access service providers to avoid universal service obligations…creates opportunities for regulatory arbitrage…[and they] have a competitive advantage over those who are

[16] Id.

[17] Id., para 72

required to contribute, as they do not need to recover any such payments from their end users.[18]…Therefore, as interstate telecommunications traffic migrates to the competitive broadband Internet access market, the Commission should recognize that there is a 'telecommunications service' component in Internet access service and requires 'equitable and nondiscriminatory' contributions. Even if it continues to treat the communications component only as 'telecommunications' the Commission must …apply its neutrality principle by requiring all broadband Internet access providers to contribute to universal service."

Only by broadening the base of contributors on an equitable and nondiscriminatory basis, will the public interest be served by establishing a long term, sustainable contribution base in order to maintain universal service as the market continues to evolve (OPASTCO on page 17). FW&A believes that the Commission should adopt the position of the State Consumer Advocates that, "The FCC should require those Internet access providers who operate on, or provide access to persons and entities through the PTSN, to contribute to universal service support, including cable modem access providers…all Internet access providers should contribute to universal service support no matter the medium through which those wireline broadband Internet access providers supply public access."[19]

(VI)
CONCLUSION

Broadband deployment in small, rural LEC service areas will only be facilitated and the goal of ubiquitous availability advanced by classifying wireline broadband access as a telecommunications service or by allowing rural LECs to opt out of deregulation, if

[18] Information in brackets added for clarity.

broadband access is classified as Title I. This flexibility for rural LECs will allow them to continue assigning these costs to interstate to be included in the NECA pool and tariffs, thus providing (a) Reasonable customer rate levels and (b) Incentives to continue broadband deployment in rural areas. Alternatively, if the Commission inappropriately classifies wireline broadband Internet access as an information service, the Act's goal of ubiquitous availability of broadband service to all Americans will be retarded and possibly not met in rural areas. As OPASTCO notes on page 5 of its comments:

> "Any new mechanism must be crafted so as to ensure that the pool is sufficient enough to allow the carriers that utilize it to continue providing advanced services to consumers at reasonable rates." and, "A one size fits all' regulatory approach would ignore the significantly different impacts that different carriers – and therefore consumers – may encounter as a result of reclassification.

In conjunction with classifying wireline broadband access as a telecommunications service, a rule change that the Commission should seriously consider is the elimination of its line sharing and line splitting rules. Elimination of these rules will provide an incentive, not a disincentive for incumbent LECs to deploy broadband facilities, in not only urban, but also high cost rural areas. CLECs will, like ISPs, still have wireline broadband access to end-users on the same terms and conditions as the incumbent LEC and its affiliated ISPs have, if any, through the Computer II and III requirements. Classifying wireline broadband Internet access facilities as a telecommunications service, maintaining the current Computer II and III requirements and eliminating the line sharing

[19] Comments of the State Consumer Advocates, filed May 3, 2002, page 64.

and line splitting requirements will allow incumbent LEC broadband services to exist in a minimal regulatory environment and minimize regulatory burdens and costs.

On the other hand, classifying these facilities as information and requiring additional Part 64 and Section 254(k) cost allocations will significantly increase the costs of incumbent LECs.

Finally, the preservation of universal service will be enhanced if all providers of broadband service, as well as the ISP providers of information services, are required to contribute to universal service and to contribute on a consistent and non-discriminatory basis.

Respectfully submitted on behalf of the ILECs by,

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